

1992

The State of Utah v. William D. Peterson, TI : Response to Petition for Rehearing

Utah Court of Appeals

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William D. Peterson; Appellant Pro Se.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 920689-CA
vs.	:	
WILLIAM D. PETERSON, II,	:	Priority 16
Defendant/Appellant.	:	

RESPONSE TO PETITION FOR REHEARING
OF PLAINTIFF/APPELLEE THE STATE OF UTAH

Appeal from the
Fourth Judicial Circuit Court, Utah County
Honorable E. Patrick McGuire, Presiding

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU
50
.A10
DOCKET NO. 920689 CA

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FILED

FEB 3 1993

COURT OF APPEALS

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LIST OF ALL PARTIES

Plaintiff in this action is the State of Utah. The only defendant is William D. Peterson, II.

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF JURISDICTION	1
STATEMENT OF THE ISSUES	1
DETERMINATIVE STATUTES	2
STATEMENT OF THE CASE	2
STATEMENT OF RELEVANT FACTS	3
ARGUMENT	5
CONCLUSION	8
CERTIFICATE OF SERVICE	9
Addendum A - Docket of <u>State of Utah v. Peterson</u> Fourth Circuit Court - Provo	

Cases Cited

	<u>Page</u>
<u>Crossland v. Peck,</u> 738 P.2d 631 (Utah 1987)	5
<u>Freegard v. First Western Nat'l Bank,</u> 738 P.2d 614 (Utah 1987)	5
<u>Galloway v. Mangum,</u> 744 P.2d 1365 (Utah 1987)	5
<u>Pate v. Marathon Steel Co.,</u> 692 P.2d 765 (Utah 1984)	5-6
<u>Steck v. Aagaire,</u> 789 P.2d 708 (Utah 1990)	5-6
<u>Williams v. State of Utah,</u> 716 P.2d 806 (Utah 1986)	5

Statutes, Rules and Other Authorities Cited

	<u>Page</u>
Utah Code Ann. § 78-2a-3	2, 7
Utah Rules of Appellate Procedure, Rule 3	2, 5-8
Utah Rules of Civil Procedure, Rule 54(b)	5
Utah Rules of Civil Procedure, Rule 72(a)	6

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Plaintiff/Appellee,	:	Case No. 920689-CA
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WILLIAM D. PETERSON, II,	:	Priority 16
Defendant/Appellant.	:	

**RESPONSE TO PETITION FOR REHEARING
OF PLAINTIFF/APPELLEE THE STATE OF UTAH**

STATEMENT OF JURISDICTION

This court is without jurisdiction to hear the instant appeal. This appeal was not taken from a final order of the circuit court, nor is it a petition for an order to permit an interlocutory appeal. Because no particular order of the trial court is being appealed, the instant action could not even be brought as an interlocutory appeal.

STATEMENT OF THE ISSUES

1. Does this court have jurisdiction to hear the instant appeal?

STANDARD OF REVIEW: Because this issue was not raised in the lower court, there is no lower court decision to review on this issue.

2. Can a criminal defendant bring a civil "counter complaint" against the State of Utah in a criminal proceeding?

STANDARD OF REVIEW: Because this issue was not raised in the lower court, there is no lower court decision to review on this

issue.

DETERMINATIVE STATUTES

Utah Code Ann. § 78-2a-3(2)(d-f) (1992 Supp.):

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- · ·
- (d) appeals from the circuit courts, except those from the small claims department of a circuit court;
- (e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
- (f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

Rule 3(a), Utah Rules of Appellate Procedure

Filing appeal from final orders and judgments. An appeal may be taken from a district, juvenile, or circuit court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

STATEMENT OF THE CASE

The instant action is a criminal matter stemming from a traffic citation issued against the defendant, William D. Peterson. The matter originated in a justice court, but venue was changed to the Fourth Circuit Court - Provo. The criminal trial was set for October 15, 1992 at 1:30 p.m..

Mr. Peterson filed what purported to be a "civil counter complaint" against the State of Utah in his criminal action, and submitted for decision to the circuit court his motions for default

judgment in the "counter complaint." By a docket entry of September 21, 1992, Judge McGuire indicated that he would not address the notice to submit for decision in as much as this was not a proper procedure in a criminal matter. A copy of the docket as of December 10, 1992 is attached hereto as Addendum A.

On the morning of October 15, 1992, Mr. Peterson filed his current notice of appeal. It was docketed that day with the entry "Notice of Appeal for Lack of Jurisdiction and Failure to Enter Default Filed by Def.." This notice of appeal was then entered on the docket a second time on October 20, 1992. The circuit court docket clearly shows that no other notice of appeal has been docketed with that court.

On the afternoon of October 15, 1992 the criminal matter was tried before Judge McGuire. The defendant did not appear. Defendant was found guilty and assessed a forty dollar fine. No appeal has been taken of that decision.

STATEMENT OF FACTS

1. The instant action is a criminal matter brought against Mr. William D. Peterson, II.

2. Mr. Peterson sought to file a civil counter complaint against the State of Utah in the instant criminal complaint and sought default judgment against the State of Utah on this counter complaint. At pages 4 and 5 of his Docketing Statement, Mr. Peterson cites four prior civil and administrative proceedings where he has filed similar or identical civil claims.

3. On the morning of October 15, 1992, Mr. Peterson filed his

current notice of appeal.

4. The instant notice of appeal was docketed on October 15, 1992 with the entry "Notice of Appeal for Lack of Jurisdiction and Failure to Enter Default Filed by Def.." This notice of appeal was then entered on the docket a second time on October 20, 1992 for an unknown reason. A possible explanation is shown by the fact that the notice of appeal was first date stamped by the Fourth District Court, and then by the Fourth Circuit Court. It would appear that the notice was misfiled initially in the wrong court, but then correctly sent to the Circuit Court that same morning.

5. On the afternoon of October 15, 1992 the criminal matter was tried before Judge McGuire. The defendant did not appear. Defendant was found guilty and assessed a forty dollar fine. No appeal has been taken of that decision.

6. No final order had been entered in the instant action at the time of the filing of the present appeal. Mr. Peterson, in his docketing statement, affirmatively states that the instant notice of appeal was filed before the criminal trial was even held. Docketing Statement, page 6, final note.

7. As part of his Docketing Statement, dated November 9, 1992, the plaintiff filed with the Utah Court of Appeals a copy of the Notice of Appeal that had been filed with the Circuit Court on October 15, 1992.

8. This further copy of the notice of appeal (identified by the defendant as a second notice of appeal) was at no time filed with the trial court. The circuit court docket clearly shows that

no notice of appeal has been docketed with that court on or about November 9, 1992.

ARGUMENT

Rule 3(a) of the Utah Rules of Appellate Procedure provides, in part, that "An appeal may be taken from a . . . circuit court to the appellate court with jurisdiction over the appeal from all final orders and judgments ...". Rule 54(b) of the Utah Rules of Civil Procedure provides, in part, that:

In the absence of [Rule 54(b) certification], any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The Utah Supreme Court has consistently held that non-final orders and judgments cannot be appealed. Steck v. Aagaire, 789 P.2d 708 (Utah 1990); Galloway v. Mangum, 744 P.2d 1365 (Utah 1987); Crossland v. Peck, 738 P.2d 631 (Utah 1987); Freegard v. First Western Nat'l Bank, 738 P.2d 614 (Utah 1987); Williams v. State of Utah, 716 P.2d 806 (Utah 1986); Pate v. Marathon Steel Co., 692 P.2d 765 (Utah 1984).

Steck involved a group of three lawsuits that had been consolidated at the district court. Two of the actions had been dismissed while the third action was still pending in the trial court. Plaintiffs in one of the two dismissed actions filed an appeal without seeking a Rule 54(b) certification. This Court held

that:

Because the judgment appealed does not dispose of all claims of all parties in the consolidated case, it does not constitute a final judgment, and this court has no jurisdiction to review it.

Steck, 789 P.2d at 709. In Pate, the plaintiff sued three defendants. The trial court granted one of the defendants summary judgment. Plaintiff attempted to appeal the grant of that summary judgment to this Court as a matter of right pursuant to former Rule 72(a) of the Utah Rules of Civil Procedure, the predecessor to Rule 3 of the Utah Rules of Appellate Procedure. This Court wrote: "Because other claims and parties remained in the suit, we dismissed the appeal on the ground that it was not taken from a final judgment." Pate, 692 P.2d at 767.

The same rule and result was properly applied here. The trial court had, at the time of the filing of the instant notice of appeal, taken no action that could be construed as final. The instant appeal is not taken from any judgment of the trial court, but from a perceived failure of the trial court to grant plaintiff a civil damages judgment in a criminal matter. Not even the criminal matter was final at the time of the filing of the notice of claim. The trial was scheduled to occur on the afternoon of the day that plaintiff filed the instant appeal. No order or decision of the lower court has been presented to this Court for review. Rather, the plaintiff seeks, by his appeal, to bring his civil "counter claim" before this Court to be decided.

Rule 26 of the Utah Rules of Criminal Procedure does not

authorize such an appeal. This Court is without jurisdiction in the instant action. The instant action does not come within the appellate jurisdiction of this Court as set forth by Utah Code Ann. § 78-2a-3 (Supp. 1992) and was therefore properly dismissed.

Nor can the defendant rely on his alleged second notice of appeal. Mr. Peterson, on November 9, 1992, filed his docketing statement in this court. As part of that document, Mr. Peterson appended a copy of his original notice of appeal. This is what Mr. Peterson now claims was his second notice of appeal. This notice was not filed in the trial court as required by Rule 3 of the Utah Rules of Appellate Procedure. See the attached docket of the Circuit Court, Addendum A. It was simply an exhibit to the docketing statement filed in the appellate court. As such, it could not confer jurisdiction on this court.

Even if this Court did have jurisdiction over the instant appeal, the appeal was properly dismissed. Mr. Peterson, a criminal defendant, sought to inject a civil cause of action for damages against the State of Utah into his criminal proceeding. Civil and criminal matters cannot be brought in the same proceeding. They are different actions that could not be tried or handled together. The trial court properly ignored Mr. Peterson's efforts. Mr. Peterson was free to file his civil complaint against the State of Utah as a separate lawsuit, and he has done so on several occasions. But Mr. Peterson cannot bring a civil claim for damages, either in tort or in contract, as a counter claim in a criminal proceeding. In as much as Mr. Peterson's notice of appeal


asks this Court to allow him to do just that, it was properly dismissed. There is no jurisdiction to hear a civil counter claim in a criminal proceeding.

CONCLUSION

This Court correctly dismissed the instant appeal on the grounds that the Court did not have jurisdiction to hear the appeal. The instant appeal was not taken from a final order of the circuit court, but was instead filed prior to the trial of the instant criminal matter. The defendant's alleged second notice of appeal was not filed in the trial court, as required by Rule 3 of the Utah Rules of Appellate Procedure, but was actually just an exhibit attached to the Docketing Statement filed in this Court on November 9, 1992.

The notice of appeal was also correctly dismissed in as much as it seeks to bring a civil damages action in a criminal proceeding. Criminal and civil proceedings are separate and distinct. Both the trial court, and this court, were without jurisdiction to entertain a civil cause of action within a criminal proceeding.

DATED this 3rd day of February, 1993.


BRENT A. BURNETT
Assistant Attorney General
Attorney for State of Utah

CERTIFICATE OF MAILING

This is to certify that I mailed four copies of the foregoing
RESPONSE TO PETITION FOR REHEARING OF THE PLAINTIFF/APPELLEE STATE
OF UTAH to the following this 32nd day of February, 1993:

William D. Peterson
1037 Watercress Ln #2v
Midvale, Utah 84047

Brent A. Burnett

ADDENDUM 'A'

Defendant

Citation: 872961

UHP Case: 925006518 TC

PETERSON, WILLIAM D

Traffic Court Case

Judge: E Patrick McGuire

9174 QUAIL HOLLOW DR

SANDY

UT 84093-2869

NO OTN # FOR THIS CASEOfficer

263 UHP PELTON

ChargesBail

Violation Date: 06/20/92

1. DRIVE W/O REG/TITLE

41-1A-1303

40.00

Sev: IN

2. DELINQUENT FEE

DELINQUENT FEE

20.00

Sev:

Proceedings

7/30/92 Case filed on 07/30/92.

SJV

8/26/92 Delinquent Fee 20.00

MLW

8/27/92 RETURNED MAIL FILED: UPDATED ADDRESS - 9174 QUAIL HOLLOW DR,
SANDY, UT 84093-2069. DOCKET MAILED TO DEFENDANT TO NEW AD-
DRESS

CMP

CMP

CMP

9/01/92 Notice of Setting [10 minute trial]

RHR

TRL scheduled for 10/15/92 at 0130 P in room 3 with EPM

RHR

9/02/92 DEF WANTED TO KNOW WHY THIS HAS BEEN SET FOR TRIAL AS JUSTICE

LLR

COURT HAS NEVER RESPONDED TO HIS NOTICE TO SUBMIT FOR DECISION.

LLR

I CALLED JUSTICE COURT TO FIND OUT WHERE NOTICE OF APPEAL WAS.

LLR

THEY SAID THAT THIS IS A CHANGE OF VENUE, NOT AN APPEAL.

LLR

DEFENDANT IS TREATING THIS AS A CIVIL COMPLAINT AND NOT A

LLR

TRAFFIC CITATION. MEMO HAS BEEN SENT TO JUDGE EPM AS TO WHAT

LLR

NEXT STEP IS. JUDGE EPM ON VACATION UNTIL 9-21-92.

LLR

9/14/92 DEFENDANT CAME IN AS HE BELIEVES THAT THIS COURT DOES NOT HAVE

RHR

JURISDICTION IN THIS MATTER AND THAT THIS TICKET HAS BEEN PAID

RHR

HE STATES THAT THIS MATTER IS FOR MORE THAN \$20,000 AND WHY DOES

LLR

HE HAVE TO GO TO TRIAL ON THIS MATTER. CASE IS WITH JUDGE EPM

LLR

WAITING FOR RESPONSE TO DEF'S NOTICE.

LLR

9/21/92 PER JUDGE EPM/COURT DOES NOT NEED TO RESPOND TO DEFENDANT'S

LLR

NOTICE TO SUBMIT FOR DECISION AS THIS IS NOT A PROPER PROCEDURE

LLR

IN A CRIMINAL MATTER. THIS CASE HAS BEEN SET FOR TRIAL ON

LLR

10-15-92 AND DEFENDANT HAS BEEN GIVEN NOTICE OF TRIAL. HE IS

LLR

REQUIRED TO BE PRESENT AT TRIAL AT THE TIME GIVEN.

LLR

9/29/92 DOCKET MAILED TO DEF THIS DAY.

LLR

9/05/92 NOTICE OF DEFICIENT RECORDS, NOTICE OF LACK OF JURISDICTION, AND

LLR

NOTICE OF PRE-TRIAL ISSUES PENDING FILED BY DEF. MATTER REMAINS

LLR

SET FOR TRIAL.

LLR

9/07/92 AT MY REQUEST, JUSTICE COURT HAS SENT COPY OF THEIR DOCKET ALONG

LLR

WITH COPY OF COMPLAINT AGAINST PLTF'S ATTORNEY FILED BY DEF.

LLR

9/15/92 Trial: JUDGE: E Patrick McGuire

STC

OURTH CIRCUIT COURT - PROVO

THURSDAY DECEMBER 10, 1992

2:11 PM

efendant

Citation: 872961

UHP Case: 925006518 TC

PETERSON, WILLIAM D

Traffic Court Case

0/15/92	TAPE: 28	COUNT: 803	STC
	Deft not present		STC
	ATD: None Present	PRO: ROMNEY, RICK	STC
	Chrg: DRIVE W/O REG	Plea: Not Guilty Find: Guilty - Be	STC
	Fine Amount: 40.00	Suspended: .00	STC
	Chrg: DELINQUENT FEE	Plea: Find:	STC
	Fines and assessments entered: FN	40.00	STC
	Total fines and assessments...:	40.00	STC
	EPM/BEN DAVIS PRESENT FOR PLAINTIFF. DEFENDANT FAILED TO APPEAR		
	TRIAL IS HELD IN ABSENTIA. PATROLMAN PELTON, UHP, SWORN AND		
	TESTIFIED. COUNTY RESTS. COURT FINDS DEFENDANT GUILTY AS		
	CHARGED. DEFENDANT TO PAY \$40 BY 11/15/92. ALL CIVIL MATTERS		
	ARE DISMISSED. CC: DEFENDANT.		
	Chrg: DRIVE W/O REG	Plea: Not Guilty Find: Guilty - Be	STC
	Fine Amount: 40.00	Suspended: .00	STC
	Chrg: DELINQUENT FEE	Plea: Find:	STC
	NOTICE OF APPEAL FOR LACK OF JURISDICTION AND FAILURE TO ENTER		
	DEFAULT FILED BY DEF.		
0/19/92	Case Type changed from TN to TC		
	Began tracking Fine Stay	Review on 11/15/92	STC
0/20/92	NOTICE OF APPEAL FOR LACK OF JURISDICTION AND FAILURE TO ENTER		
	DEFAULT FILED BY DEF. AFFIDAVIT OF IMPECUNIOSITY AND NOTICE TO		
	SUBMIT FOR DECISION FOR FAILURE TO ANSWER COMPLAINT, FAILURE TO		
	PLEAD OR DEFEND TO ENTER DEFAULT ALSO FILED BY DEF.		
	RETURNED MAIL FILED		
0/27/92	NOTICE OF DEFICIENT RECORDS, NOTICE OF LACK OF JURISDICTION AND		
	NOTICE OF PRE-TRIAL ISSUES PENDING RECEIVED FROM DEF. DEF HAS		
	HANDWRITTEN THAT THIS MATTER HAD BEEN SENT TO WRONG COURT DUE TO		
	A HANDWRITTEN NOTE FROM JUSTICE COURT CLERK SAYING FILE HAD BEEN		
	TRANSFERRED TO DISTRICT COURT. I CALLED JUSTICE COURT AND SPOKE		
	WITH CLERK IN CHARGE OF MR. PETERSON'S CASE. SHE SAID THAT WAS		
	AN ERROR ON HER PART AND WILL PREPARE A DOCKET ENTRY AND SEND IT		
	TO DEF AND TO US. CASE WAS NEVER INTENDED TO GO TO DISTRICT		
	COURT BUT I THINK THAT DUE TO JUSTICE COURT'S HUMAN ERROR, DEF		
	DOES NOT THINK OUR COURT HAS JURISDICTION.		
	COPY OF LETTER TO DEF RECEIVED FROM UTAH COA.		
0/29/92	COPY OF DOCKET RECEIVED FROM JUSTICE COURT STATING THAT HAND-		
	WRITTEN MESSAGE HAD BEEN A MISTAKE AND CASE SHOULD HAVE COME TO		
	CIRCUIT COURT AS IT DID.		
2/03/92	UTAH COURT OF APPEALS CALLED AND REQUESTED THAT FILE BE SENT TO		
	THEM THIS DAY. ORIGINAL FILE PREPARED AND SENT.		

ccounting Summary

	Total Due	Paid	Credit	Balance	Time Pay#
Fine Due	40.00			40.00	

Defendant

PETERSON, WILLIAM D

Citation:

872961

UHP Case: 925006518 TC

Traffic Court Case

Additional Case DataSentence Summary

1. DRIVE W/O REG

Fine amount: 40.00

2. DELINQUENT FEE

Plea: Not Guilty

Suspended: .00

Plea:

Find: Guilty - Bench

Find:

Personal Description

Sex: M DOB: 08/24/57

Dr. Lic. No.: 8839699

State: UT Expires:

Scheduled Hearing Summary

TRIAL

on 10/15/92 0130 P in room 3 with EP

Tracking Status

Fine Stay

Review Date

11/15/92

End of the docket report for this case.